

EXHIBIT A

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FAX: 44-207-448-3029**FACSIMILE TRANSMISSION****SINGAPORE**65-6428-2400
FAX: 65-6428-2500**DATE:** April 24, 2007**To:**

NAME	FAX NO.	PHONE NO.
Alfonso Chan	(214) 593-9111	(214) 593-9140

FROM: Lawrence T. Kass, Esq. **PHONE:** (212) 530-5178 **FAX:** (212) 822-5796**Re:** *Fujitsu-Nanya Patent Litigation*

FILE NUMBER:	35068.02100	08936
NUMBER OF PAGES, INCLUDING COVER:	3	ORIGINALS BY FEDEx/MAIL: NO

MESSAGE:**PLEASE SEE ATTACHED.****CONFIDENTIALITY NOTE:**

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VIA FACSIMILE AND EMAIL

Alfonso Chan
Shore Chan Bragalone LLP
325 N. St. Paul St., Suite 4450
Dallas, Texas 75201

Re: Nanya Technology Corp., et al. v. Fujitsu Limited et al.
No. 06-cv-00025 in the U.S. District Court for the District of Guam

Dear Alfonso:

This letter addresses: (1) Plaintiffs' Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Interrogatories (Nos. 1-6); (2) Plaintiffs' Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Requests for Production (Nos. 1-29); (3) Plaintiff Nanya Technology Corporation U.S.A.'s Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Requests for Admissions (Nos. 1-34); and (4) Plaintiff Nanya Technology Corporation's Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Requests for Admissions (Nos. 1-34) (collectively "Plaintiffs' Responses"). Plaintiffs' Responses lack any substantive answers and are entirely improper.

For example, with regard to Plaintiffs' responses to Interrogatory Nos. 1-6, Requests For Production Nos. 1-29 ("RFPs") and Requests For Admissions Nos. 1-34 ("RFAs"), Plaintiffs claim to be under no obligation to respond to any of these interrogatories and requests because no pre-discovery disclosures have been made. Plaintiffs also indicate that they intend to withhold answers to the interrogatories and withhold documents responsive to the RFPs until the filing of Plaintiffs' Response in Opposition to Fujitsu Microelectronics America, Inc.'s Motion to Dismiss or Transfer to the Northern District of California and for a More Definite Statement ("Response to Defendant's Motion to Dismiss or Transfer"), which is due on May 15, 2007.

Alfonso Chan
April 24, 2007
Page Two

Neither the dates for serving Initial Disclosures nor for filing Plaintiffs' Response to Defendant's Motion to Dismiss or Transfer tolls or otherwise delays Plaintiffs' obligation to provide substantive answers to Defendants' jurisdictional interrogatories or RFAs, or to produce responsive documents. To the extent that Plaintiffs now have answers and responsive documents, they should be provided immediately. It was Plaintiffs who sought and received the current period of jurisdictional discovery and this period is not a one-sided discovery phase. Defendants have produced in excess of 118,000 pages of documents responsive to Plaintiffs' jurisdictional discovery requests and Plaintiffs have yet to produce any documents responsive to Defendants' jurisdictional discovery requests. Please confirm that Plaintiffs will immediately provide substantive answers to Defendants' interrogatories and RFAs, and begin rolling production of documents responsive to its RFPs one week from today, *i.e.*, on May 1, with completion of rolling production one week after that, *i.e.*, on May 8.

With regard to both sets of Plaintiffs' responses to the RFAs, Plaintiffs further state in every response that each request seeks information irrelevant to any claim or defense in the case. Such an allegation is false and an egregious violation of the Federal Rules of Civil Procedure. The information sought is entirely appropriate and in fact is analogous to the very information sought by Plaintiffs' own jurisdictional discovery requests. Thus, for each request, please immediately provide answers responsive to the RFAs.

This letter identifies certain immediately apparent deficiencies in Plaintiffs' Responses, and we reserve the right to follow up on additional points and deficiencies.

We request a meet and confer tomorrow, April 25, 2007 at 4 p.m. EST to discuss these issues. If these issues are not resolved by this meet and confer, Defendants will file an expedited motion to compel.

Very truly yours,



Lawrence T. Kass

cc (via email):

Christopher Chalsen
Dan Benjamin
Michael Shore
Martin Pascual
Judge John Unpingco
Joseph Razzano

EXHIBIT B

SHORECHAN

BRAGALONE LLP

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April 25, 2007

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Direct Dial:	(214) 593-9110		
Re:	<i>Nanya Technology Corp., et al. v. Fujitsu Limited, et al.</i>		
Total Pages:	3		
Message:	Please see attached. Thank you.		

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April 25, 2007

VIA FACSIMILE:

Lawrence T. Kass
Milbank Tweed Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005

Subject: *Nanya Technology Corp., et al. v. Fujitsu Limited, et al.*

Dear Larry:

Please find this letter as a confirmation of my previous email sent to you.

As previously indicated to you, I believe we can avoid burdening the Court with the parties' contemplated discovery motions. As we discussed during our telephone conference, please consider the following: Plaintiffs will provide substantive responses to Defendants' written discovery requests within 10 days after Defendants serve their predisclosure disclosures required by Local Rule 26.2. Similarly, within 10 days after Defendants serve their predisclosure disclosures, Plaintiffs will provide Defendants with deposition dates for the requested Rule 30(b)(6) categories. Both parties reserve the right to assert privileges and other reasonably warranted objections, as well as the right to seek Court intervention when necessary.

As evident from Judge Manibusan's comments during today's hearing, the parties would be well advised to comply with all the formalities required by the Local Rules. We believe our proposal is more than reasonable, since it substantially shortens our period to respond to your discovery requests from 30 days after predisclosure disclosures to 10 days after predisclosure disclosures, thereby affording you additional time to use our discovery responses in your reply brief and during the Rule 30(b)(6) depositions.

**SHORECHAN
BRAGALONE LLP**

Lawrence T. Kass, Esq.
Milbank Tweed Hadley & McCloy LLP
April 25, 2007
Page 2

Please inform us as soon as practicable whether this is acceptable or whether you have an alternate proposal.

Sincerely,

Alfonso Garcia Chan, by phone: 202
Alfonso Garcia Chan

EXHIBIT C

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FROM: Lawrence T. Kass, Esq. **PHONE:** (212) 530-5178 **FAX:** (212) 822-5796

RE: *Fujitsu-Nanya Patent Litigation*

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Dallas, Texas 75201

Re: *Nanya Technology Corp., et al. v. Fujitsu Limited et al.,*
No. 06-cv-00025 in the U.S. District Court for the District of Guam

Dear Alfonso:

This responds to your email of this morning and confirmation letter this afternoon (“letter”). During our meet and confer teleconference beginning at 12 a.m. EST this morning, you purported to present a proposal to provide substantive responses to Defendants’ discovery requests within 10 days after Defendants serve their pre-discovery disclosures. However, you refused to explain or elaborate upon Nanya’s position despite our numerous inquiries. Instead, you assured us that you would elaborate in writing. Yet your follow-up letter still does not address our inquiries.

For example, your letter does not address whether or how the content of any Rule 26(a)(1) disclosures from FMA under your proposal would affect whether Nanya provides full responses to our discovery requests. If the content of the disclosures would not affect Nanya’s obligation to provide full responses, then why does Nanya need 10 days? If Nanya envisions that the content of FMA’s disclosures may affect Nanya’s obligation to provide full responses, then what is to prevent Nanya from simply deeming FMA’s disclosures insufficient under its own subjective and biased “standards” and thereby avoid discovery? (We note that FMA has already provided initial disclosures in the Northern District of California case.) Nanya’s refusal to answer these and other legitimate questions (posed repeatedly in our teleconference) demonstrates that Nanya’s proposal is illusory and improper. Just as Nanya is employing delay tactics in an attempt to moot Defendants’ Motion to Immediately Dismiss or Transfer, here, Nanya is using delay tactics to avoid responding to FMA’s legitimate jurisdictional discovery requests until those requests are moot.

Alfonso Chan
April 25, 2007
Page Two

Nanya's attempt to hide behind Local Rule 26.2 is improper. Pursuant to the March 5, 2007 Discovery Order, Defendants' disclosures pursuant to Fed. R. Civ. P. 26(a)(1) and L.R. 26.2 are due sixty (60) days after the entry of the Scheduling Order on May 4, 2007. Accordingly, those disclosures are not yet due. The fact that they are not yet due does not excuse Nanya from participating in jurisdictional discovery. The same Discovery Order, which both parties approved on February 16, 2007, discussed discovery procedures with respect to both parties and never suggested that jurisdictional discovery would be one-sided, as Nanya is now insisting. Nor did the order otherwise restrict Defendants' jurisdictional discovery options. It was Nanya who sought and received the current period of jurisdictional discovery, and it is highly improper for Nanya to stonewall Defendants' legitimate discovery requests during that court-ordered jurisdictional discovery period.

Defendants have been more than cooperative in jurisdictional discovery. Defendants have produced in excess of 118,000 pages of documents responsive to Plaintiffs' jurisdictional discovery requests. In contrast, Plaintiffs have yet to produce one document or any written discovery responsive to Defendants' jurisdictional discovery requests. Defendants' requests are more than reasonable and are precisely tailored. Plaintiffs' objections are meritless and seek only to delay or completely avoid substantive responses prior to Plaintiffs' opposition to Defendants' Motion to Transfer or Dismiss. Plaintiffs are seeking to conduct trial / motion by ambush. The Court will be fully informed of Plaintiffs' gamesmanship.

Of course, these same points apply to Nanya's threatened motion to quash FMA's deposition notices under 30(b)(6).

As stated in my April 24 letter, Plaintiffs must agree to immediately provide substantive answers to Defendants' interrogatories and RFAs, and begin rolling production of documents responsive to its RFPs on May 1, with completion of rolling production on May 8. Plaintiffs must also agree to schedule appropriate 30(b)(6) depositions on or about Thursday, May 10, 2007, as requested in FMA's deposition notices.

Very truly yours,



Lawrence T. Kass

cc (via email):

Christopher Chalsen
Dan Benjamin
Michael Shore
Martin Pascual
Judge John Unpingco
Joseph Razzano

EXHIBIT D

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April 26, 2007

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Re:	<i>Nanya Technology Corp., et al. v. Fujitsu Limited, et al.</i>		
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April 26, 2007

VIA FACSIMILE:

Lawrence T. Kass
Milbank Tweed Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005

Subject: *Nanya Technology Corp., et al. v. Fujitsu Limited, et al.*
(No. 06-CV-00025, in the U.S. District Court, District of Guam)

Dear Larry:

I am writing in response to your April 25, 2007 letter.

Contrary to your allegations, Plaintiffs are not trying "to hide behind Local Rule 26.2['s]" pre-discovery disclosure requirements. Page 6 of Judge Manibusan's April 26, 2007 Order makes clear that the Court's Local Rules must be respected: "the Court ... will not hesitate to impose sanctions in the future, if warranted, when the Local Rules are not followed." Page 2, lines 20-21 of the Court's Discovery Plan places Defendants' due date for making disclosures under Local Rule 26.2 at May 4, 2007. Thus, pursuant to the Court's Discovery Plan and the Local Rule 26.2, Plaintiffs are not obligated to provide any objections or responses to Defendants' written discovery requests until 30 days after May 4, 2007, i.e., June 4 (June 3 falls on a Sunday). Nonetheless, as a courtesy, Plaintiffs provided Defendants with early, provisional sets of discovery objections and responses on April 23, 2007. As an accommodation to Defendants' purported urgency, however, Plaintiffs are willing to shorten the 30 day response period to 10 days, thereby resulting in a discovery response date of May 18, 2007. Plaintiffs believe the 10 day shortened period is more than reasonable, especially when viewed in light of Judge Manibusan's April 26, 2007 Order affording Defendants 14 days to comply with the discovery requests set forth in Martin Pascual's April 13, 2007 letter.

Of course, Defendants always have the option of imposing an earlier discovery due date by making earlier pre-discovery disclosures. Absolutely nothing has prevented Defendants from doing so since this lawsuit was filed.

**SHORECHAN
BRAGALONE LLP**

Lawrence T. Kass, Esq.
Milbank Tweed Hadley & McCloy LLP
April 26, 2007
Page 2

Assuming Defendants will timely comply with Local Rule 26.2, please advise us of your arrangements with and schedule of the American Institute in Taiwan to accommodate the requested Rule 30(b)(6) depositions of Plaintiff Nanya Technology Corporation. Plaintiffs prefer that depositions taken in Taiwan occur before a Travel Services Officer in accordance with 22 U.S.C. §§ 3305 and 3306 (a)(1). Obviously, this information is important and will impact the deposition availability dates Plaintiff can offer.

In closing, Plaintiffs respectfully request that Defendants reconsider Plaintiffs' discovery compromise proposal. In the event Defendants decide to reject the proposal and move forward with a motion to compel, the proposal shall be withdrawn and Plaintiff will stand by Local Rule 26.2 and the regular 30 day response period. Also, in such event, please email us a draft Rule 37.1(b) stipulation, preferably in Microsoft Word format, at your earliest convenience.

Sincerely,



Alonso Garcia Chan

EXHIBIT E

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FILED
DISTRICT COURT OF GUAM
MAR 12 2007
MARY L.M. MORAN
CLERK OF COURT

6 **IN THE DISTRICT COURT OF GUAM**

7 **TERRITORY OF GUAM**

8 * * *

9
10 NANYA TECHNOLOGY CORP., and)
11 NANYA TECHNOLOGY CORP. U.S.A.,)
12)
13)
14)
15)
16)
17)
18)
19 vs.) CIVIL CASE
20 FUJITSU LIMITED, FUJITSU)
21 MICROELECTRONICS AMERICA, INC.,)
22)
23)
24)
25)
)

19 **TRANSCRIPT OF PROCEEDINGS**

20 **BEFORE**

21 THE HONORABLE JOAQUIN V. E. MANIBUSAN, JR.,
22 Magistrate Judge

23 **HEARING ON MOTIONS**

24 **FRIDAY, MARCH 2, 2007**

25 * * *

Wanda M. Miles
Official Court Reporter
District Court of Guam



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22 LAW OFFICES OF MILBANK, TWEED, HADLEY & MCCLOY
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25

1 HAGATNA, GUAM; FRIDAY, MARCH 2, 2007; 10:05 A.M.

2 * * *

3 THE CLERK: Civil case No. 06-00025, Nanya
4 Technology Corp., versus Fujitsu, Motion To Compel
5 Substantive Responses to Plaintiffs' First Requests for
6 Production to Defendant Fujitsu Microelectronics
7 America, Inc.; Motion To Clarify Magistrate Judge's
8 Order and Motion To Compel Substantive Responses;
9 Motion To Exceed Number Of Interrogatories and Request
10 for Admissions.

11 Counsel, please state your appearances.

12 MR. UNPINGCO: Yes, Your Honor, John Unpingco,
13 from Unpingco and Associates on behalf of plaintiffs.
14 I'll be taking care of the scheduling order.

15 THE COURT: All right.

16 MR. UNPINGCO: And my co-counsel.

17 MR. SHORE: Dennis Shore, Your Honor, I'll be
18 handling the motion, motion to exceed the number of
19 interrogatories and request for admissions.

20 THE COURT: All right. There's others,
21 there's others in the back.

22 MR. RAZZANO: Joe Razzano and Alfonso Chan,
23 we're going to sit with Mr. Shore on behalf of
24 plaintiffs.

25 THE COURT: All right.

1 MR. BENJAMIN: Dan Benjamin and Michael Murray
2 on behalf of the defendants, Your Honor.

3 THE COURT: Good morning.

4 MR. MURRAY: Good morning, Your Honor.

5 THE COURT: Let me gulp some water; I just
6 took some antibiotics and I need to push that down with
7 some water.

8 We're here this morning for basically just one
9 motion. It appears that the other motions have been
10 resolved and are rendered moot by a stipulation signed
11 by the parties. And generally, as counsel has said, it
12 appears that the main issue not yet resolved is the
13 plaintiff's motion to exceed the number of
14 interrogatories and requests for admissions.

15 I've reviewed the motion, and the responses.
16 A couple of things I want to bring out before I hear
17 from the parties.

18 It seems that the posture of the case at the
19 present time merely is the complaint that's been filed.
20 I don't believe there had been an answer to that
21 complaint other than the motion to dismiss or to
22 transfer the case to the Northern District.

23 Is that correct, or is that not correct?

24 MR. MURRAY: Yes, that's correct, Your Honor.
25 Neither defendant has filed an answer yet.

1 THE COURT: Okay. So I'm going with the
2 complaint that's before the court. In looking at the
3 complaint, of course there's a cause of action for
4 violation of the Sherman Antitrust Act, Clayton Act,
5 three counts for infringement of patents belonging to
6 the plaintiff, 15 general counts of non-infringement of
7 patents belonging to the defendant.

8 When I look at these causes of action, and
9 there are actually 50 in number, and compare that with
10 perhaps the issues that are at stake in the Northern
11 District, based on what I read from the complaint, the
12 plaintiffs' causes of action for infringement are at
13 issue there, plus four patents belonging to the
14 defendants that are made an issue there. So it seems
15 to me, I guess, at the beginning of this argument, that
16 the only patents at issue in the Northern District are
17 seven in number when compared to the number of patents
18 at issue here. Is that correct?

19 MR. CHAN: Actually, Your Honor, if I could
20 address that issue. My name is Alfonso Chan, counsel
21 for plaintiff Nanya Technology Corporation. The Nanya
22 filed an answer and counterclaims in the Northern
23 District of California, and in that answer and
24 counterclaims, it is true that the three Nanya patents
25 are at issue. But in addition, the other 15 Fujitsu

1 patents were placed at issue --

2 THE COURT: To your answer?

3 MR. CHAN: Yes, and also the antitrust claims
4 as well. So now the same claims are at issue --

5 THE COURT: In both courts.

6 MR. CHAN: -- in both courts, yes.

7 THE COURT: All right. And the other thing,
8 I had hoped perhaps that the parties would come to a
9 meeting of the minds regarding this issue, because it
10 appears to affect both sides of the equation. I gather
11 from the defendants that if the court were to allow
12 plaintiff's motion, I suppose that they're going to be
13 treated the same way. So I just want to have the
14 parties keep that in mind.

15 And I note for purposes of my reading of these
16 memoranda that one of the main contentions of the
17 defendant is the fact that generally the rules have not
18 been complied with, technically, by the furnishing of
19 the proposed interrogatories or admissions which would
20 actually provide a basis for finding a need to exceed
21 such a limit. And those are important issues that
22 defendants have raised that I think perhaps also
23 plaintiff should deal with in that motion.

24 So let me hear from plaintiff at this point.

25 MR. SHORE: Judge, I'm Kenneth Shore; I

1 represent Nanya.

2 THE COURT: And just before we begin, also, my
3 understanding of the motion is that you want to serve
4 generally a beginning set, and once those sets have
5 been I suppose answered, you want to serve a second
6 set.

7 MR. SHORE: Yes, Your Honor.

8 THE COURT: So all together we're looking at
9 perhaps 2,000 in number, because you have the two
10 antitrust claims in addition to the 18 patents.

11 MR. SHORE: I think it's 1800 would be the
12 amount that we're actually requesting, Your Honor.

13 THE COURT: But you have 1800 representing,
14 those would represent 18 patents; right?

15 MR. SHORE: One for each patent, Your Honor,
16 one set.

17 THE COURT: But you're also asserting an
18 additional 25 for the two claims, the two antitrust
19 claims.

20 MR. SHORE: Correct, Your Honor, but I think
21 1800 should be enough.

22 THE COURT: Okay, I see. So the cap is 1800.

23 MR. SHORE: And that's what we're asking for.
24 I think within the 1800 we can probably hit the
25 antitrust claims as well.

1 THE COURT: All right.

2 MR. SHORE: To start off, Judge, I just want
3 to go through quickly the background of the case. This
4 controversy is actually about seven years old, and the
5 parties have been negotiating or discussing some
6 allegations that Fujitsu has made against Nanya about
7 various patents, including some Japanese patents and
8 U.S. patents and some other foreign patents. And when
9 this issue first arose, you know, the parties
10 negotiated I think in good faith for a number of years;
11 when those negotiations broke down, Fujitsu filed a
12 suit in Tokyo District Court against Nanya asserting
13 one Japanese patent, but at the same time they were
14 demanding a billion dollars to settle that case and a
15 license for worldwide sales of Nanya's products. So
16 the issue here and the amount in controversy, you know,
17 is huge, and this is a critical case for my client.

18 And that also comes back to our counterclaims,
19 and our counterclaims kind of -- they focus around the
20 coercive nature of these negotiations and the coercive
21 nature of the Tokyo lawsuit. In order to settle the
22 Tokyo lawsuit, they've also asserted several U.S.
23 patents that have expired, U.S. patents that we clearly
24 do not infringe, and U.S. patents that are invalid.
25 And what they're trying to do is basically threaten to

1 exclude Nanya from the Japanese market by tying
2 licenses for U.S. patents over products that we don't
3 infringe and tying licenses to expired U.S. patents to
4 access to the Japanese markets. And that's kind of the
5 basis of our antitrust claims. Those claims are
6 obviously very complicated and those antitrust claims
7 alone are a very large and complex case. And that's
8 kind of what forced us to seek the protection from this
9 court, protection for our access to U.S. markets,
10 protection to our sales in these markets and our profit
11 margin in U.S. markets, including this market here in
12 Guam.

13 So there are now 18 patents at issue in this
14 case, the 15 Fujitsu patents that Fujitsu has asserted
15 against Nanya, and then we've also asserted three
16 patents of our own. But by asserting these patents
17 against Fujitsu, judge, I want to stress to the court
18 that Fujitsu's framed this controversy, Fujitsu is the
19 one who brought 8 -- 15 different patents. So the
20 complexity of this case is actually a result of
21 Fujitsu's actions and we --

22 THE COURT: But the cause of action in
23 Northern California only raises seven in total.
24 You've brought the others through your counterclaim.

25 MR. SHORE: Exactly, Your Honor. But that's

1 the ones they asserted in the Northern District of
2 California, but that's not the ones they've asserted
3 against us in the negotiations in Tokyo.

4 THE COURT: But does that -- you see, one of
5 the problems I hear here, or I see here, is that I see
6 these claims generally are of -- it's like a person
7 saying I haven't committed a crime but yet the
8 government hasn't prosecuted legally, as to those
9 non-infringing claims.

10 MR. SHORE: Well, Your Honor --

11 THE COURT: And in the absence of an answer,
12 they might say, well, yeah, you haven't infringed.

13 MR. SHORE: Well, Your Honor, the Declaratory
14 Judgment Act allows this court to have jurisdiction
15 over any ripe controversy, any real controversy between
16 the parties. They've asserted all these 15 patents
17 against us in the negotiations in Tokyo. We chose the
18 15 Fujitsu patents --

19 THE COURT: But assuming they did that in
20 Tokyo, though, in the Northern District litigation,
21 they did not assert that.

22 MR. SHORE: But they filed that case after we
23 filed this case, Your Honor. We chose those 15 patents
24 based upon the 15 patents that they've accused us of
25 infringing. I mean, they've given us a letter, you

1 know, it took us a while to get the letter out of them,
2 but we got a letter out of them saying here's the
3 patents, here's the U.S. patents that we think Nanya's
4 infringed.

5 THE COURT: But does it make it ripe for
6 discovery here when I don't see anything that puts it
7 at issue?

8 MR. SHORE: Well, they've demanded that we pay
9 them licensing fees for those patents.

10 THE COURT: In the non-legal setting. But in
11 the legal setting here, there's been no answer in the
12 Northern District, they've not actually made it an
13 issue. I'm just raising it for purposes of discovery.

14 MR. SHORE: Well, they have made it -- I think
15 they have made it an issue, Judge, by accusing us of
16 infringing those patents. You know, they have --

17 THE COURT: But, you know, I can say that to
18 you outside the courtroom, hey, you've infringed my
19 patents, but as long as I haven't filed something
20 formally, it never becomes an issue in the legal
21 setting.

22 MR. SHORE: Judge, I'm not sure that is a
23 requirement to grant the court declaratory judgment
24 jurisdiction. If that were the case, well, then you
25 couldn't file declaratory judgment until someone has

1 sued you for --

2 THE COURT: But in a sense you're saying I
3 haven't committed a crime, and the government is not
4 charging you.

5 MR. SHORE: Well, they've accused us of it.

6 And in order to get it off of our back, in order to let
7 us get on with our business and let us sell our
8 products without this threat of a billion dollar
9 lawsuit, we have a right under the U.S. Code to --

10 THE COURT: But don't you have a right to
11 continue to do business unless some legal action is
12 brought against you?

13 MR. SHORE: We should be able to do that
14 business without -- you know, clear of any threats,
15 Your Honor. I mean, they've made explicit threats, and
16 you know, explicit assertions of these patents against
17 us.

18 THE COURT: The threats could be baseless, you
19 know.

20 MR. SHORE: Which they are baseless, Your
21 Honor, and that's why we filed the declaratory judgment
22 alleging that we don't infringe, the patents are
23 invalid and unenforceable. And we do think they're
24 baseless, you know, that's what we think. And in order
25 to get this controversy finally behind us, we have the

1 right to come in and file declaratory judgment actions
2 since they've made explicit allegations of infringement
3 of those patents.

4 THE COURT: All right.

5 MR. SHORE: And with all these patents at
6 issue, Judge, I think when you're considering how to
7 manage the discovery in this case, the Manual For
8 Complex Litigation talks about early identification and
9 clarification of issues critical to discovery control.
10 And I can't emphasize enough that this case really
11 involves the joinder of 19 different cases. There are
12 18 -- this is 18 patent lawsuits in one, the joinder of
13 18 patent lawsuits and an antitrust suit.

14 So in addition to the discovery for the 18
15 patent lawsuits and the one antitrust lawsuit, we also
16 have the issue of personal jurisdiction discovery, and
17 so there is, you know, so there's a need for a large
18 number of discovery in this case, Judge, because we
19 could have brought each one of these patent cases, each
20 one of these patent cases could be brought as an
21 individual case. You know, if you file a patent case
22 with one patent, you get 25 interrogatories and 25
23 requests for admissions. But this is not just one
24 patent, it's 18 patents, 18 patent cases.

25 And when you look at Rule 26(b)(2)(iii),

1 Judge, in determining the scope of discovery that
2 you're going to allow and the amount of discovery
3 you're going to allow, the court generally should look
4 at the burden and extent and determine whether or not
5 they outweigh the likely benefits. And Rule 26 gives
6 us five different things to consider. It gives us the
7 needs of the case, the amount in controversy, the
8 parties' resources, the importance of the issues at
9 stake, and the importance of the proposed discovery in
10 resolving that dispute. And I'll discuss each one of
11 those briefly, Your Honor.

12 THE COURT: Let me ask you this to begin with.
13 Local Rule 33.1, does it contravene any Federal Rule of
14 Civil Procedure?

15 MR. SHORE: Excuse me, Judge?

16 THE COURT: Local Rule 33.1, does that
17 contravene any Federal Rule of Civil Procedure?

18 MR. SHORE: Judge, under the Federal Rules of
19 Civil Procedure and under the local rules, you have the
20 power and it's within your discretion to tailor the
21 discovery in your cases the way you think it should
22 be --

23 THE COURT: The rules currently say that if
24 you want to exceed these numbers, you must serve
25 additional interrogatories, you shall submit to the

1 court --

2 MR. SHORE: And, Judge, you're talking about
3 the sample interrogatories? We've actually got sample
4 interrogatories. But in this case, sir, what I wanted
5 to do with you today is go through all the different
6 issues that are going to be pertinent in each of those
7 patent cases. And there's going to be discovery in
8 each one of those. I mean, obviously, it would be
9 very burdensome for us on the front end to draft 1800
10 interrogatories and submit them to you to determine
11 whether you should allow us to draft and serve 1800
12 interrogatories.

13 THE COURT: But isn't the whole purpose of
14 33.1, isn't the whole purpose of that rule is to say to
15 you, well, draft these interrogatories first so that
16 those can be -- it seems to me that you haven't done
17 any drafting in terms of what these requests might be,
18 but you're asking the court at this point to grant, you
19 know, in a sense what the defendants say as a blanket
20 rule in terms of numbers. And at this point your
21 request really appears to be very reasonable, it's
22 just, well, what are the contours?

23 MR. SHORE: And Rule 33 --

24 THE COURT: And that's my problem, I don't
25 know what the contours are, in light of the fact that

1 the first requirement of the rule has not been met.

2 MR. SHORE: Well, that rule is in place
3 obviously to help you, Judge. I mean that rule is in
4 place to --

5 THE COURT: Well, to help me and also to help
6 the defendant in terms of perhaps what objection they
7 may make to your request.

8 MR. SHORE: But I think the defendants are
9 pretty aware of the different issues that arise in
10 patent cases.

11 THE COURT: I know they are.

12 MR. SHORE: I mean, they've litigated hundreds
13 of these things. They know exactly what we're going to
14 ask. Rule 33.1 is there for you, Judge. I mean, you
15 have -- I mean, it's there to give you information and
16 make it easier for you to determine how you want to
17 tailor discovery in the cases that you preside over.

18 THE COURT: Well, let me ask you this.

19 Supposing you ask one question in terms of all of these
20 patents, how have we infringed, that's one question.

21 MR. SHORE: I've got -- I'll go --

22 THE COURT: I'm just -- just for purposes of
23 argument, you ask one question: In terms of all of
24 these patents, how have we infringed these patents that
25 you say we've infringed upon.

1 MR. SORE: Well, I mean --

2 THE COURT: Would that be a fair question or
3 not?

4 MR. SHORE: That's a fair question, I mean --

5 THE COURT: And that's my one question.

6 MR. SHORE: That's one question we will have
7 in the interrogatories, and actually there will be
8 several different interrogatories going to that same
9 question, how do you allege that Nanya infringes these
10 patents.

11 THE COURT: Right, that would be the second
12 question.

13 MR. SHORE: And then there's questions: Did
14 they do a proper Rule 11 investigation before they
15 asserted the patents against Nanya. What evidence do
16 they show that Nanya had actual or constructive notice
17 of the patents. You know, we have interrogatories
18 going to whether or not Fujitsu actually owns the
19 patent, whether or not --

20 THE COURT: See, that's what I'm saying. All
21 of these questions, instead of it being 500, can be
22 reduced to say a hundred, 150 questions.

23 MR. SHORE: But --

24 THE COURT: At the initial stage.

25 MR. SHORE: At the initial stage there's a lot

1 of different issues that go with each and every patent.
2 There's the Rule 11 investigation; there's notice;
3 there's ownership, you know, did the named inventors
4 actually invent the patent; did they disclose the
5 patent invention one year prior to the filing date,
6 which would invalidate the patent; were there prior
7 inventions that contemplated the invention of each
8 patent or rendered the invention obvious, which goes to
9 validity and enforcement. How was each one of the
10 patents conceded and reduced to practice, which goes to
11 validity and enforceability.

12 There's claim terms, like take the 428 patent,
13 for example, there's claim terms like data-latch
14 circuits, I mean, there's strobe signals, clock
15 signals. What's a data-latch circuit? How would
16 someone familiar, skilled in the art define that? Or
17 how they would understand that. Is there extrinsic
18 evidence that they want to bring in to construe these
19 claim terms, or what intrinsic evidence do they want to
20 -- I mean, it just goes --

21 THE COURT: Can those be obtained through
22 depositions?

23 MR. UNPINGCO: A moment please, Your Honor.

24 THE COURT: Yes.

25 (Pause/plaintiffs' counsel conferred.)

1 MR. SHORE: Judge, if you like, I've got a
2 presentation that goes through each one of these
3 issues. Of course, we're going to have, you know, with
4 each patent, we're going to have all of these issues.
5 Disclosure will help flush them out. Once these
6 issues, all these different issues that arise in any
7 patent case, once we get the initial set of discovery,
8 that will raise additional issues, but that allows us
9 to go into the depositions knowing what to ask.

10 I mean, we can't go into -- as interrogatories
11 in any case, when I send a set of interrogatories, I
12 get the answers to the interrogatories, that helps me
13 plan how I'm going to depose someone, that lets me know
14 what questions I want to ask. But if I go into a
15 deposition blind, I go into deposition and I don't know
16 what they're going to allege, you know, constitute a
17 constructive notice, I don't know what the ownership
18 issues are, I don't know how they're saying this
19 invention was conceived and reduced to practice, I
20 can't go into a deposition. Very unproductive for me
21 to go into a deposition and try to start from scratch
22 in discovery with the deposition without having these
23 questions answered. And these are questions that arise
24 in every single patent case.

25 If you'd like I can go through the

1 presentation that I've prepared for you today, that
2 we've prepared for you today to show an example patent,
3 the 428 patent, and the types of issues that are going
4 to arise with that one patent. There's even a sample
5 of -- we've got a sample. For example, I can show you
6 a copy of the 428 patent, I've got it right here in one
7 -- which is just one of the 18 patents.

8 May I approach, Your Honor?

9 THE COURT: Yes, you may.

10 MR. SHORE: Which is just one of the 18
11 patents that's going to be at issue in this case. In
12 addition, I've got a presentation I can go through --

13 THE COURT: Is the problem -- is the problem,
14 though, that you haven't actually drafted these
15 interrogatories?

16 MR. SHORE: They're actually drafted in this,
17 they're drafted right here, Judge. And may I approach
18 again, Your Honor?

19 THE COURT: Yes.

20 (Handing documents to the court.)

21 MR. SHORE: In this presentation that I've
22 prepared for you on the 428 patent, it's just an
23 example of one of these patents, one of 18 patents in
24 suit, Judge. This one was filed on January 29, 1999
25 by Fujitsu listing two inventors. Inventorship is

1 obviously going to be an issue, as in any patent.
2 We've got the effective -- the priority date of the
3 claim is actually 1998, and that's through a treaty
4 with Japan, because there was a previous Japanese
5 patent. And the patent issued September 18, 2001.

6 This patent, semiconductor device reconciling
7 different timing signals, there are 42 different claims
8 in this case, in this patent, five independent claims
9 and 37 dependent claims.

10 And then, for example, we can go to claim one.
11 A semiconductor device which receives addresses in
12 synchronism with the clock signal and receives data in
13 synchronism with a strobe signal, said semiconductor
14 device comprising address-latch circuits which latches
15 the address.

16 And you can kind of see what we're talking
17 about, claims construction, just right here, Judge.
18 What would someone skilled in the art, how would
19 they -- what is an address-latch circuit. What is a
20 semiconductor device. These all could be, you know,
21 claim issues with regard to defining these claim terms.
22 And this is just one of five independent claims. And
23 then the dependent claims further define the scope of
24 the patent with regard to each of the independent
25 claims.

1 And then, Judge, once we move on, there's
2 interrogatories, 25 interrogatories. These
3 interrogatories that we prepared for you today, Judge,
4 these interrogatories assume that we do adopt the
5 Northern District rules, Northern District local patent
6 rules, which, and you can see, Judge, Northern District
7 local patent rules. But you have the first --

8 THE COURT: I'm biased toward the Northern
9 District; I went to school in the Northern District.

10 MR. SHORE: Okay. You have Rule 11
11 investigation; in other words, what Rule 11
12 investigation prior to securing the patent did they
13 conduct. Did Nanya have actual or constructive notice.

14 Then you go on to ownership. Does Fujitsu
15 actually own the patent. Did Tomita and Kanda actually
16 invent the patented device. You know, did Fujitsu
17 disclose the patent devices more than a year prior to
18 the filing for the patent. Are there prior inventions
19 that contemplated or rendered obvious the invention
20 disclosed in the 428 patent. You have, how was the 428
21 conceived and reduced to practice.

22 You know, how will Fujitsu seek to construe
23 claim terms such as address-latch circuits, strobe
24 signals, clock signals, data light memory circuits,
25 address input circuits, timing signals, all these

1 different things need to be defined. So, and for each,
2 you know, and this is just claim terms in this one
3 claim, one independent claim in one of the patents, and
4 there's 18 different patents.

5 What extrinsic and intrinsic evidence does
6 Fujitsu intend to use to define these claim terms.
7 What other manufacturers' products does Fujitsu allege
8 infringe. Which claims can be construed as mean plus
9 function claims, under 35 USC, Section 112. What
10 Nanya products does Fujitsu allege infringe the 428
11 patent. What evidence does Fujitsu intend to use to
12 prove infringement for each of the independent claims.

13 And in each claim in this patent, Judge,
14 there's five, claim one, claim nine, claim eight, claim
15 41 and claim 42; so in each one of the patents, 18
16 patents, you may have four or five independent claims.

17 Does Fujitsu contend that Nanya directly
18 infringes, induces infringement, or contributes to
19 infringement. Does Fujitsu intend to show willful
20 infringement, and if so, how they intend to do that,
21 which is important, because that would be an issue for
22 attorneys' fees and other things.

23 You know, what are Fujitsu's alleged damages.
24 Are there other licenses out there establishing a
25 reasonable right. What are the sales of Fujitsu

1 products incorporating this invention. What are the
2 sales of Nanya products incorporating this invention.
3 How important are the features contemplated by the
4 invention of the 428 patent to the functionality of the
5 devices. Is that something that really matters to the
6 end user or original equipment manufacturers, making
7 the invention more valuable. Are there any exceptional
8 circumstances with the infringement here which would
9 entitle one side to attorneys fees.

10 And then you have a whole host of issues with
11 invalidity and unenforceability, patentability issues,
12 inequitable conduct at the patent office, laches,
13 patent misuse.

14 So, as you can see, Judge, for each one of
15 these patents, you have literally dozens of issues that
16 have to be flushed out. And in allowing these
17 interrogatories, you know, allows -- gives us, each
18 side the opportunity to do targeted depositions, and
19 the depositions would be much more productive if this
20 information in this discovery is flushed out first
21 with, with interrogatories.

22 And just getting back, I mean, obviously, the
23 importance of the discovery in resolving the issues in
24 this case is absolutely critical, and the needs of this
25 case, this additional discovery is absolutely critical.

1 But if you look at the other Rule 26(b)(2)(iii)
2 factors, (b)(2)(iii) factors that the court would look
3 at, the amount in controversy--their initial demand was
4 over a billion dollars--the amount in controversy still
5 is hundreds of millions of dollars. I mean, obviously,
6 that factor weighs strongly in favor of allowing
7 expansive discovery.

8 The parties' resources. This isn't David and
9 Goliath, I mean, this is basically Goliath and Goliath.
10 I mean, each side has hundreds of millions and billions
11 of dollars in sales, each side has plenty of lawyers
12 working on its side to get this work done. Each side
13 believes the case is critical, and can garner the
14 resources necessary to get this discovery done.

15 The importance of the issues at stake, the
16 third factor. I can't over-emphasize how important
17 this is to Nanya. I mean, this is an industry with
18 razor-thin margins, and Fujitsu is demanding license
19 fees of 3 percent on every product Nanya sells on this
20 entire planet. That is an absolutely critical issue to
21 my client.

22 THE COURT: That's related to the antitrust
23 issue, though.

24 MR. SHORE: No, that's a Rule 26(b)(2)(iii)
25 factor: Needs of the case, amount in controversy, the

1 parties' resources, the importance of the issues at
2 stake, and the importance of the proposed discovery in
3 resolving the case.

4 THE COURT: But I assume the discovery date
5 would be related to your antitrust claims?

6 MR. SHORE: Of course it's related to our
7 antitrust claims, but it's related to the patent claims
8 as well. I mean these are the factors that you'll
9 consider when you determine whether or not to grant
10 this discovery is the importance of the issues at
11 stake. And, obviously, if it's an industry with razor-
12 thin margins, if we have to pay a royalty to Fujitsu,
13 it might us process out of certain markets. This is a
14 critical case to our client. And when you have such
15 critical issues, those are the kind of cases where the
16 court should grant expansive discovery. You know, and
17 Fujitsu obviously feels that the patents at issue in
18 this case are critically important.

19 But, you know, I can't -- in summary, Judge,
20 I just want to emphasize that this is not one case,
21 this is 19 different cases. You know, once we get past
22 all of the issues with the patents, the 18 different
23 patents, and all the discovery that we just went over,
24 we still have the issues of the antitrust. You know,
25 what's the relevant market, what other licensing

1 arrangements does Fujitsu have. Are there collusive
2 licensing arrangements with other semiconductor
3 manufacturers. Is this a scheme to exclude certain
4 manufacturers from the market by placing licensing
5 burdens on them which basically push them out of the
6 industry. We're not the only ones to ever make these
7 kind of allegations against Fujitsu. They're defending
8 plenty other antitrust cases as well related to similar
9 conduct.

10 And then we have the whole issues with
11 jurisdictional discovery. I mean, the discovery in
12 this case is critical. It's not one case, this is
13 really 19 different cases; and whether this was an
14 antitrust case standing alone, we get 25
15 interrogatories, 25 requests for admissions at least.
16 And antitrust case is an extremely complicated case in
17 its own right. And then you have 18 different patent
18 cases, each with their issues of validity,
19 infringement, enforceability, you know, the complex
20 issues that we went over earlier.

21 So, I would ask the court to look at this case
22 not as one case, but as 19 different cases, and each of
23 the 19 cases has its own host of issues that need to be
24 explored in discovery. And the only way we can do
25 this, the only way we can prepare for the depositions,

1 the only way we can prepare for trial in this case is
2 to have the expansive discovery that we've asked for.

3 Thank you, Your Honor.

4 THE COURT: Counsel.

5 MR. MURRAY: Good morning, Your Honor, I'm
6 Michael Murray representing the defendants.

7 Your Honor, I'd like to start off just briefly
8 addressing some of the background statements that
9 Mr. Shore made. He made some allegations about Fujitsu
10 asserting expired patents improperly, and improperly
11 trying to tie the litigation going on in Japan to the
12 worldwide markets, et cetera.

13 Now those are really off point for the topic
14 of today, but I just want to briefly say that none of
15 that is true. The action filed in Japan involves a
16 Japanese patent; Fujitsu has been willing from the
17 beginning to grant a license under that patent alone.
18 Nanya doesn't like the terms of the license that was
19 offered under that patent. There's been no
20 inappropriate attempts to tie settlement of the
21 Japanese case to some sort of worldwide license, so
22 that's just not true. Neither is it true that Fujitsu
23 has demanded a billion dollars in connection with the
24 Japanese litigation.

25 But let me move on to the issue of this

1 particular motion. Basically, Your Honor, this motion
2 is extremely premature, for a number of reasons. First
3 of all, as Your Honor noted, we have not yet even filed
4 an answer in this case. What's happening right now is
5 there is jurisdictional discovery going on. Nanya has
6 not filed any interrogatories in connection with the
7 jurisdictional discovery, so apparently they don't feel
8 that they need interrogatories in order to resolve the
9 jurisdictional issues.

10 The motions to dismiss and transfer have been
11 set for hearing, we're moving forward with document
12 production, we have a stipulation between the parties
13 to sort of stage the discovery and the briefing on the
14 jurisdictional issues. So we certainly think that the
15 jurisdictional issues should be resolved before the
16 court deals with sort of the proper scope of the merits
17 discovery that should go on in this case.

18 Second, Mr. Shore has really not given the
19 court a good reason for disregarding Rule 33.1. Rule
20 33.1 sets forth a perfectly reasonable procedure for
21 obtaining additional interrogatories. If they want
22 additional interrogatories, they should write the
23 interrogatories down, submit them. First, of course,
24 have a meet and confer with us to discuss the
25 interrogatories.

1 The 25 interrogatories that Mr. Shore showed
2 the court this morning I saw for the first time about
3 ten minutes before this hearing. So there's been
4 really an unfortunate reluctance on the part of
5 plaintiff in this case to meet and confer with us and
6 try to work through things. What they should do is
7 follow the local rules. They should serve the 25
8 interrogatories that they're entitled to serve, they
9 should then write any additional interrogatories that
10 they feel needed, sit down with us and discuss them, we
11 might be able to agree to the interrogatories. If
12 there's some disagreement between the parties, the
13 interrogatories that we agree about should be presented
14 to Your Honor, under Rule 33.1, and if necessary, we
15 can have argument on those particular interrogatories.
16 But to just grant a blank check for 900 interrogatories
17 would just be extremely burdensome, especially this
18 early in the case when, as I said, we haven't filed an
19 answer yet, we really don't know exactly what the
20 posture of the case is going to be a few months from
21 now.

22 This same relief was requested, interestingly,
23 in the Northern District of California, as part of the
24 initial scheduling before Judge Wilkin; they asked for
25 25 interrogatories per patent, they got zero. There

1 was no additional interrogatories granted in the
2 scheduling order that came out of the Northern District
3 of California.

4 Now, looking at the particular issues that
5 Mr. Shore talked about and the sample interrogatories,
6 as I mentioned, I had very little time to look at them,
7 really just as he was speaking, but a lot of these
8 issues really can be resolved through other ways. The
9 way that a lot of the issues are settled in terms of
10 ownership of the patents and things like that is
11 through documents. And they have in fact served 1500
12 document requests on us already. They're going to get
13 documents beginning either this week or early next week
14 the documents will start coming, so Mr. Shore won't be
15 going into deposition blind. He will have documents,
16 he'll see the assignments, for example, of rights in
17 the patents to Fujitsu, he'll have time to study them
18 and then he can go into a deposition and ask questions
19 about them. Or if he feels at that time he has to do
20 it through interrogatories, he can follow the local
21 rules and request additional interrogatories.

22 The system that is set up in the Northern
23 District of California for claim construction is the
24 system that we think really is most appropriate here,
25 which is Local Rule 4-2 in the Northern District of

1 California. Local Rule 4-2 sets forth a procedure for
2 resolving the claim construction differences, when
3 figuring out what are the terms that are really
4 important in the claims that need to be construed.
5 According to Rule 4-2, there is an exchange of
6 preliminary claims construction and extrinsic evidence,
7 the parties exchange lists of terms that they feel need
8 to be construed, the parties meet and confer to try to
9 narrow those issues.

10 Now the Northern District of California
11 implemented these local rules really as a result of
12 having parties go through claim construction through
13 this sort of interrogatory way that Mr. Shore is
14 proposing here by serving lots and lots of contention
15 interrogatories, and it's a big burden on the parties;
16 it costs a lot of money to answer all these
17 interrogatories. With 900, Mr. Shore will ask us to
18 define virtually every word in these claims, which is
19 really going to be very burdensome and ultimately not
20 very useful for the case.

21 And the way that the Northern District of
22 California ultimately set up for parties to resolve
23 these things is through the local rules, which is a
24 nice, straightforward procedure, reduces the burden on
25 both sides, and through that procedure -- and we've

1 been through this many times -- the parties usually
2 come to some agreement on what they disagree about.
3 Okay. There are these 20 terms at the end of this
4 process, maybe there are 20 terms that need to be
5 construed, and that forms the basis for going into the
6 so-called Markman claim construction hearing where the
7 court resolves the claim construction disputes. It's
8 not through hundreds of interrogatories, that process
9 that Nanya suggested just doesn't make sense, it's very
10 burdensome, and we would suggest that when we get to
11 that point, that the procedures set forth in local
12 rule --

13 THE COURT: The process that you're suggesting
14 does not exist here, though.

15 MR. MURRAY: It does not exist here, but Nanya
16 has in fact suggested that the local rules be adopted
17 for this case. We don't think that the court should or
18 needs to wholesale adopt the local rules, but the
19 parties can come to some agreement, I think, that Local
20 Rule 4-2 -- I don't think Nanya is suggesting that the
21 court adopt everything excepting Local Rule 4-2. So
22 Nanya is suggesting, and we agree, that Rule 4 is an
23 appropriate way to resolve the claim construction
24 issues. And once we go through that process, a lot
25 of this will shake out and it won't be necessary to